

impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments have been solicited or received. PTC will notify the Commission of any written comments received by PTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) ³ of the Act and pursuant to Rule 19b-4(e)(2) ⁴ promulgated thereunder because the proposal effects a change in a dues, fee, or other charge imposed by PTC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR-PTC-95-01 and should be submitted by March 29, 1995.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-5577 Filed 3-7-95; 8:45 am]

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[Release No. 34-35429; File No. SR-Phlx-94-59]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Enhanced Specialist Participation in Parity Options Trades

March 1, 1995.

On November 18, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change: (1) clarifying when a specialist is entitled to receive an enhanced participation on parity equity and index options trades; and (2) altering the size of the enhanced specialist participation presently available pursuant to Phlx Rule 1014(g). Notice of the proposed rule change appeared in the **Federal Register** on December 30, 1994.³ No comment letters were received on the proposed rule change. The Exchange filed Amendment No. 1 to the proposal on December 20, 1994,⁴ and Amendment No. 2 on February 9, 1995.⁵ This order approves the Exchange's proposal, as amended.

On May 25, 1994, the Commission approved an enhanced specialist participation for "new equity option specialist units trading newly listed options classes where the specialist is on parity with two or more registered options traders ("ROTs") ("New Unit

Split").⁶ On August 26, 1994, the Commission approved, on a one-year pilot basis, an enhanced specialist participation whereby an equity option specialist on parity with one or more ROTs is counted as two crowd participants ("Two-for-One Split").⁷

When either the New Unit Split or the Two-for-One Split apply, no customer order on parity is restricted to a smaller participation than any other crowd participant, including the specialist.⁸

At this time, the Exchange proposes to amend both Rule 1014(g) and Commentary .17 thereto to specify that the enhanced splits apply where equity and index option specialists are on parity with controlled accounts, not just with ROTs. The term "controlled account" includes accounts controlled by or under common control with a member broker-dealer.⁹

In addition to defining the circumstances under which the Two-for-One Split and the New Unit Split will be applied, the current proposal also serves to replace, in certain situations, the Two-for-One Split with a percentage distribution. Those situations are where there are orders for more than five contracts and where only one or two controlled accounts are on parity with the specialist for such orders. In those cases: where there is one controlled account on parity with

⁶ See Securities Exchange Act Release No. 34109 (May 25, 1994), 59 FR 28570 (June 2, 1994) ("Exchange Act Release No. 34109"). The New Unit Split was subsequently expanded to include index option specialists. See Securities Exchange Act Release No. 35028 (November 30, 1994), 59 FR 63151 (December 7, 1994) ("Exchange Act Release No. 35028").

⁷ The Two-for-One Split only applies to orders for more than five contracts. Additionally, it applies to all option classes listed after August 26, 1994, and to 50% of each specialist unit's issues listed prior to that date. Specifically, each specialist unit's issues are divided into quartiles based on the most recent quarterly contract volume; the specialist unit may choose one-half of the issues in each quartile, as long as the total number of issues does not exceed 50% of the unit's issues. See Securities Exchange Act Release No. 34606 (August 26, 1994), 59 FR 45741 (September 2, 1994) ("Exchange Act Release No. 34606"). As with the New Unit Split, this provision was subsequently expanded to include index option specialists. See Exchange Act Release No. 35028, *supra* note 6.

⁸ See Phlx Rule 1014(g) (Two-for-One Split) and Commentary .17 thereto (New Unit Split).

⁹ A controlled account is defined as "any account controlled by or under common control with a member broker-dealer." See Phlx Rule 1014(g). Customer accounts are all accounts other than controlled accounts and specialist accounts. For purposes of Rule 1014(g), discretionary accounts are considered customer accounts. Telephone conversation between Edith Hallahan, Special Counsel, Phlx, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on February 28, 1995. The Phlx represents that the rule will continue to prohibit the application of any such enhancement in instances that would lessen the pro rata participation of customer orders on parity.

³ 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

⁴ 17 CFR 240.19b-4(e)(2) (1994).

⁵ 17 CFR 200.30-3(a)(912) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1992).

³ See Securities Exchange Act Release No. 35141 (December 22, 1994), 59 FR 67744 (December 30, 1994).

⁴ See Letter from Gerald O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated December 14, 1994.

⁵ In Amendment No. 2, the Phlx withdrew Amendment No. 1, inserted the effective date of the Two-for-One Split (as defined herein) into new Rule 1014(g)(ii), corrected an erroneous cross-reference in new Rule 1014(g)(ii), and clarified that the proposed exceptions to the Two-for-One Split are mutually exclusive. See Letter from Gerald O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated February 9, 1995.

the specialist, the specialist will receive 60% of the contracts and the controlled account will receive 40% of the contracts; and where there are two controlled accounts on parity, the specialist will receive 40% of the contracts and each controlled account will receive 30% of the contracts. In qualified situations where there are three or more controlled accounts on parity with the specialist, the existing Two-for-One Split will continue to apply whereby the specialist will be counted as two crowd participants.

The Exchange believes that in transactions where there are less than three controlled accounts on parity with the specialist, the current Two-for-One split becomes overly burdensome on those controlled accounts. For example, applying the Two-for-One Split to a 100 contract buy order in a trading crowd consisting of one ROT and the specialist, will result in the specialist selling 66 contracts and the ROT selling 34 contracts. Pursuant to the proposed amendment, in the above example the specialist's share will be reduced to 60 contracts and the ROT's share will increase to 40 contracts. As another example, where there are two ROTs on parity with a specialist, the present Two-for-One Split will entitle the specialist to sell 50 contracts and each ROT to sell 25 contracts. The proposal will reduce the specialist's share to 40 contracts and increase each ROT's share to 30 contracts. These results, the Exchange believes, demonstrate that while the specialist will continue to receive an enhanced split, the split will be reduced in small crowds where the impact on ROTs is more pronounced.

Finally, the Exchange also proposes to codify the Two-for-One and New Unit Split provisions, as amended herein, into new Options Floor Procedure Advice B-6 for ease of reference on the trading floor. Similarly, to improve the organization of Rule 1014, the Phlx also proposes to reorganize Phlx Rule 1014 by numbering the Two-for-One Split provisions as Rule 1014(g)(ii) and by moving the New Unit Split provisions from Commentary .17 to Rule 1014(g)(iii).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)¹⁰ in that the proposal is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to protect

investors and the public interest. Specifically, as the Commission stated in approving the New Unit Split and the Two-for-One Split, enhanced specialist participation for equity and index option parity trades may serve to aid the Exchange in attracting and retaining well capitalized specialist units to the Exchange without unreasonably restraining competition or harming investors.¹¹

Further, the Commission believes that it is appropriate to amend the Two-for-One and New Unit Splits to state that the enhanced participations apply when an equity or index option specialist is on parity with controlled accounts and not just with ROT orders. The Commission's main concern in originally approving the enhanced specialist participations was ensuring that customer orders were not disadvantaged by the application of the enhanced splits.¹² Because the definition of controlled account excludes customer accounts, the protection afforded to customer orders is not in anyway diminished by this proposal.

Finally, the only other substantive amendment in the current proposal is to alter the Two-for-One Split in situations where the specialist is on parity with less than three controlled accounts. Because the effect of this amendment is merely to reduce the benefit given to specialists on parity trades and, accordingly, to minimize the impact of the Two-for-One Split on controlled accounts, the Commission believes that the proposal does not raise any new issues that were not adequately addressed when the Two-for-One Split was originally approved.¹³

The Commission believes that the remaining proposed amendments are non-substantive and, therefore, do not raise any material regulatory issues. Specifically, the proposal to reorganize the structure of Rule 1014 and to incorporate the New Unit and Two-for-One Splits, as amended, into a new Options Floor Procedure Advice, may reduce potential confusion by providing easier to use references to the enhanced participation provisions.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 merely clarifies the

manner in which the Two-for-One Split will be applied and corrects an erroneous cross-reference, neither of which raise any new regulatory issues that were not addressed in the original proposal. Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 2 to the Phlx's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the File No. SR-Phlx-94-59 and should be submitted by March 29, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-Phlx-94-59), as amended is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-5580 Filed 3-7-95; 8:45 am]

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[Rel. No. IC-20931; 812-8630]

Dean Witter Reynolds Inc., et al., Notice of Application

March 1, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Dean Witter Reynolds Inc. (the "Sponsor"); and Dean Witter Select Municipal Trust, Dean Witter Select

¹¹ See Exchange Act Release Nos. 34109, *supra* note 6, and 34606 *supra* note 7.

¹² *Id.*

¹³ See Exchange Act Release No. 34606, *supra* note 7.

¹⁰ 15 U.S.C. 78f(b)(5) (1988).

¹⁴ 15 U.S.C. 78s(b)(2) (1988).

¹⁵ 17 CFR 200.30-3(a)(12) (1994).